2

EXECUTIVE SECRETARIAT

Routing Slip

TO:

		ACTION	INFO	DATE	INITIAL
1	DCI				
2	DDCI				
3	EXDIR				
4	D/ICS				
5	DDI				
6	DDA				
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8	DDS&T				
9	Chm/NIC				
10	GC				
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12	Compt				
13	D/EEO				
14	D/Pers				
15	D/OEA				
16	C/PAD/OEA				
17	SA/IA				
18	AO/DCI				
19	C/IPD/OIS				
20	N/IO/ECON		✓		
21					
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SUSPENSE ____________
Date

Remarks:

Hold

25X1

Not referred to OMB. Waiver applies.

Executive Secretary

9/29/83

Date

3637 (10-81)

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

83-2012/1

September 29, 1983

MEMORANDUM TO: SIG-IEP MEMBERS

FROM: AL KEEL
ASSOCIATE DIRECTOR AKeel

SUBJECT: Export Administration Act

Attached are draft issue statements, relating to Congressional consideration of the Export Administration Act, to be forwarded for decision to the President by Judge Clark. The issue statements indicate agency positions as registered with Commerce, NSC and OMB pursuant to the Friday, September 23, 1983, SIG-IEP discussion. Recommendations made reflect the consensus view of the agencies and the unanimous view of NSC, OMB, OPD and Defense, Commerce and Treasury.

The House floor debate is expected to continue tomorrow with Senate debate anticipated next week. The Administration has been urged by Congress to communicate its positions immediately. It is thus essential to obtain prompt decisions on the outstanding issues. Moreover, as the decision memorandum reflects there is a clear consensus of view within the Administration on each of the issues. Therefore, the principals are asked to confirm their position by 6:00 p.m. today September 29, 1983. The issue statements will be provided to Judge Clark by COB today to be forwarded to the President.

Please confirm your position with my office or communicate directly with Kevin Quigley at #395-4594.

Attachments

UNCLASSIFIED UPON REMOVAL OF ATTACHMENT

CONTRACT SANCTITY

Issue

Should the Administration modify the position taken in its bill that export controls cannot be imposed for foreign policy reasons on existing contracts which cannot be completed in 270 days unless the President determines such controls to be in the overriding national interest?

Status

The House alternative protects existing contracts except when controls relate to acts of aggression, international terrorism, gross violation of human rights or nuclear weapons tests. The Senate bill protects all existing contracts, and provides no Presidential escape clause. Congressional sentiment strongly opposes the Administration provision.

Options

1. Accept the House alternative. (NSC, OMB, OPD, Commerce, Defense, Justice, State, Treasury)
2. Protect existing contracts unless there is prior congressional consultation and a Presidential determination that failure to apply controls would severly damage the national interest. (Agriculture)
3. Continue to support provision in Administration bill. (USTR)

Recommendation

Option 1. The House language is sufficiently broad to preserve Presidential flexibility.

Decision

Option 1 ________ Option 2 ________ Option 3 ________

DERIVATIVE CL BY OMB/IAD
☐ DECL ☐ REVW ON OADR
DERIVED FROM Commerce memo on same subject dtd 9/26

EXTRATERRITORIALITY

Issue

Should the Administration now express a willingness to amend current law, which permits extending the reach of foreign policy controls to U.S. subsidiaries and to foreign products made with U.S. technology?

Status

The House bill limits authority for foreign policy controls to goods and technology produced in the U.S. and would require prior approval by Congress for any further extraterritorial extension. The Senate bill makes no change in the present authority, although Senator Percy is expected to introduce an amendment limiting extraterritorial controls to 45 days without congressional approval.

Options

1. Oppose any reduction in Presidential authority. (NSC, OMB, OPD, Agriculture, Commerce, Defense, Justice, Treasury)

2. Seek to modify the House provision to permit extraterritorial controls but require the President to try to negotiate agreements with foreign countries on the use of these controls. (USTR)

3. Seek to clarify the House bill to exclude foreign subsidiaries of U.S. firms from foreign policy controls (but retain other extraterritorial powers). (State)

Recommendation

Option 1. Oppose any reduction in Presidential authority. If a fallback is needed there is a consensus that Option 2 would be adequate.

Decision

Option 1 _______ Option 2 _______ Option 3 _______

CONSULTATIONS WITH CONGRESS

Issue

Should the Administration accept a requirement for consultations with and reporting to Congress prior to the imposition of foreign policy controls?

Status

Current law states that the President shall "in every possible instance" consult with Congress before controls are imposed, and the President shall report immediately on the actions taken. The House bill requires prior consultations and reporting, as does the Senate bill.

Options

1. Oppose inflexible requirement of prior consultations and reporting. Accept short deadline (5 or 10 days) for reporting after the fact. (NSC, OMB, OPD, Commerce, Defense, Treasury)

2. Do not oppose prior consultations, but oppose prior reporting. (State, USTR)

3. Do not oppose prior consultations or prior reporting. (Agriculture, Justice)

Recommendation

Option 1. Any inflexible requirement for prior consultation and reporting may jeopardize the effectiveness of U.S. action by removing the elements of timeliness and secrecy.

Decision

Option 1 _______ Option 2 _______ Option 3 _______

FOREIGN AVAILABILITY

Issue

Should the Administration accept the Senate bill requirement that foreign policy controls be terminated if comparable goods are available from foreign suppliers unless 1) this availability is negotiated away within 6 months, or 2) the Secretary of Commerce determines the controls are necessary to achieve foreign policy objectives.

Status

Current law requires that foreign policy controls be removed if the Secretary of Commerce determines that comparable goods are available from foreign suppliers, unless the President decides that removing the controls would be detrimental. The Senate bill eliminates foreign policy controls after 6 months, unless the Secretary of Commerce determines that maintaining the controls is necessary. This intentional loophole effectively voids the decontrol requirement.

Also, both Senate and House bills attempt to shift the burden for establishing foreign availability away from the exporter onto the Administration. All agencies oppose burdenshifting.

Options

(Oppose burdenshifting and):

1. Support the Senate position on decontrol, but 1) extend negotiating time period to 12 months, and 2) allow the President rather than the Secretary of Commerce to make determinations regarding effectiveness of controls. (NSC, OMB, OPD, Agriculture, Commerce, Defense, Justice, Treasury, USTR)

2. Support Senate position on decontrol, except empower the Secretary of State, rather than the Secretary of Commerce to determine foreign policy implications. (State)

Recommendation

Option 1. Proposed modifications under the Senate position on decontrol acceptable. The extended time period increases opportunity for meaningful negotiations.

Decision

Option 1 _______ Option 2 _______ Option 3 _______

LICENSING OF COCOM TRADE

Issue

Should there be liberalized licensing provisions for exports to COCOM member countries?

Status

The Administration bill would not change current law which makes no special provision for COCOM members. However, it does declare that the Administration's policy is to develop licensing mechanisms to minimize burdens placed on free world trade. The Senate bill requires the issuance of only general licenses (the most liberal license category) for exports of multilaterally controlled items unless the item is on the Militarily Critical Technology List (MCTL). The House bill removes the requirement of a validated license (the strictest license category) for exports to countries that maintain export controls cooperatively with the United States, except for those end-users designated by the Secretary of Commerce.

Options

1. Support the Senate provision if modified to specify that validated licenses must be required for items on either the MCTL or the Commodity Control List (CCL). (NSC, OMB, OPD, Agriculture, Commerce, Defense, Treasury)

2. Do not change the licensing requirements, but reduce licensing time from 90 days to 30 days. (Justice)

3. Support the House provision, but modify to allow the Secretary to require licenses in more situations than the House bill allows. (State, USTR)

Recommendation

Option 1. This preserves our existing flexibility to require licenses for items currently controlled.

Decision

Option 1 _______ Option 2 _______ Option 3 _______

AGRICULTURE

Issue

Should the Administration oppose new Congressional limitations on the President's authority to control the export of agricultural commodities?

Status

The Administation bill makes no change to current law, in which agricultural contracts are protected from any export controls for 270 days unless the President declares a national emergency or Congress declares war. The House bill authorizes foreign policy controls for only 60 days unless extended by Congress. The Senate bill precludes national security controls on agricultural products. A Senate amendment (Percy/Dixon) is expected that would limit foreign policy controls to 45 days unless extended by Congress.

Options

1. Oppose any further limitations on Presidential authority. (NSC, OMB, OPD, Commerce, Defense, Justice, USTR, Treasury)

2. Do not oppose a prohibition on controlling agriculture exports for national security purposes. (State)

3. Do not oppose new limitations on imposing agricultural controls for national security, foreign policy and short-supply purposes. (Agriculture)

Recommendation

Option 1. The Administration should not agree to an outright prohibition on export controls for any sector. Agriculture commodities are well protected under current law.

Decision

Option 1 _______ Option 2 _______ Option 3 _______